



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

October 30, 1996

The Honorable Sonya Letson  
Potter County Attorney  
303 Courthouse  
Amarillo, Texas 79101

Letter Opinion No. 96-115

Re: Whether a nonprofit cemetery association owned entirely by its members must obtain a permit from the Department of Banking in order to sell "pre-need" grave vaults to its members (ID# 26543)

Dear Ms. Letson:

You have asked this office to interpret certain provisions of article 548b, V.T.C.S., which concerns the sale of prepaid funeral services. In particular, you ask whether a member-owned, non-profit cemetery association that wishes to sell grave vaults to its members on a pre-need basis falls within the requirements of the act. If so, you wish to know whether such an association can be granted a permit to sell such merchandise under the act.

As you describe the facts of the case, the Llano Cemetery Association, believing it needed a permit from the Texas Department of Banking to sell grave vaults on a pre-need basis, applied for such a permit. According to the cemetery association, it was denied such a permit on the ground that it was not a funeral home.

Your first question is whether an association like the Llano Cemetery Association is covered by the act. You suggest that it is not, because it desires to sell grave vaults only to its members, rather than to the general public. We disagree.

The act defines "person" as "any individual, firm, partnership, corporation, or association." V.T.C.S. art. 548b, § 1(b)(8). It further defines "[p]repaid funeral benefits" to include "caskets, grave vaults, and all other articles of merchandise incidental to a funeral service." *Id.* § 1(b)(9). Finally, it requires that:

Unless a person holds a permit issued under this Act, the person may not:

(1) sell prepaid funeral benefits, or accept funds for prepaid funeral benefits, in this state under any contract.

*Id.* § 1(c).

The language of the statute is broad, sweeping, and categorical. Nothing in the statute exempts membership organizations or non-profit organizations from its strictures.

In order to sell grave vaults on a pre-need basis, an association of the sort you inquire about must apply for, and receive, a permit from the Texas Banking Department.

Your second question is whether such an association is eligible for a permit. We cannot speculate as to any particular organization, because we cannot resolve fact-based questions in the opinion process. We note, however, the Llano Cemetery Association's apparent assertion that its application, as you put it, "was denied . . . because Llano is not affiliated with a funeral home."

We are informed by the Department of Banking that such associations are indeed eligible, whether or not affiliated with a funeral home. According to a letter brief from the Department:

With a permit to sell prepaid funeral benefits, a cemetery that wishes to sell burial vaults and the opening and closing of such vaults may do so whether or not the cemetery is affiliated with a funeral home. Affiliation in this instance is immaterial because the cemetery can legally provide these particular prepaid services and merchandise itself; sale of these services and merchandise does not involve an activity requiring funeral home licensing. The Department currently licenses numerous cemeteries such as Llano to both sell outer-burial containers (including burial vaults) and the opening and closing of graves or vaults on a preneed basis.

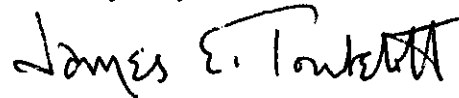
Letter from Sharon S. Gillespie, Assistant General Counsel, Texas Department of Banking, to James E. Tourtelott, Office of Texas Attorney General (Aug. 8, 1996).

Since the Texas Department of Banking is charged with the administration of article 548b, *see* V.T.C.S. art. 548b, § 2, its interpretation is entitled to great weight. *See* 67 TEX. JUR. 3D *Statutes* § 155 (1989). As to your second question, then, we concur that a cemetery association may receive a permit to sell grave vaults on a preneed basis.

**S U M M A R Y**

A member-owned, non-profit cemetery association which wishes to sell grave vaults to its members on a pre-need basis must, in order to do so, apply for and receive a permit from the Texas Department of Banking, pursuant to article 548b, V.T.C.S. Such an association is eligible to apply for and receive such a permit whether or not it is affiliated with a funeral home.

Yours very truly,

A handwritten signature in black ink, appearing to read "James E. Tourtelott". The signature is fluid and cursive, with a prominent "J" and "T".

James E. Tourtelott  
Assistant Attorney General  
Opinion Committee